IN THE CIRCUIT COURT OF HOLMES COUNTY MISSISSIPPI

Civil Action No. 9050

ELLA HORTON, et al.,

Plaintiffs,

vs.

THE AMERICAN TOBACCO COMPANY, et al.,

Defendants.

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Reidsville, North Carolina

September 29, 1987

9:00 O'Clock A.M.

VIDEOTAPED DEPOSITION

OF

WALTER WILLIE DICKERSON, SR.

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Suite 515 Southeastern Building
Greensboro, North Carolina 27401
(919) 373-0985

MNAT 00020694

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APPEARANCES:

BARRETT, BARRETT & BARRETT, by
JOHN W. (DON) BARRETT, ESQ., of counsel,
and
BYRD, DAVIS & EISENBERG, by
DON L. DAVIS, ESQ., of counsel,
appearing on behalf of the Plaintiffs.

UPSHAW, WILLIAMS, BIGGERS, PAGE & KRUGER, by
JAMES E. UPSHAW, ESQ., and
LONNIE BAILEY, ESQ., of counsel,
and
CHADBOURNE & PARKE, by
THOMAS E. BEZANSON, ESQ., and
NEIL MELLEN, ESQ., of counsel,
appearing on behalf of the Defendant
The American Tobacco Company.

CALVIN R. KING, ESQ.,
Attorney at Law,
and
RICHARD EDMONDSON, ESQ.,
Attorney at Law,
appearing on behalf of the Defendant
New Deal Tobacco and Candy Company, Inc.

ALSO PRESENT:

DEBRA GAMMON
JOHN KERNODLE

- - - - - - - - -

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Deposition of WALTER WILLIE DICKERSON, SR., taken by the Plaintiffs for the purpose of discovery and for use as evidence in the above cause, wherein ELLA HORTON, ET AL., are the Plaintiffs and THE AMERICAN TOBACCO COMPANY, ET AL., are the Defendants, pending in the Circuit Court of Holmes County, Mississippi, pursuant to notice, before GLORIA D. WRIGHT-ELLISON, Court Reporter and a Notary Public in and for the County of Guilford and State of North Carolina, in Room B286, Annie Penn Memorial Hospital, Reidsville, North Carolina, on the 29th day of September 1987, commencing at 9:00 o'clock a.m.

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STIPULATION

It is stipulated and agreed between all parties to this proceeding that all questions are deemed objected to and that a motion to strike is made as to all answers, which objections and motions to strike may be ruled upon at an appropriate time by the Court, except that objections as to the form of the questions shall be lodged at the time the questions are propounded to the witness.

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Thereupon:

MR. BARRETT: Let the record show that this is Tuesday, the 29th of September 1987, at approximately nine a.m. We're in room B286 of the Annie Penn Memorial Hospital in Reidsville, North Carolina, to take the deposition of Mr. Walter W. Dickerson.

My name is Don Barrett. I'm from Lexington, Mississippi, and I represent the plaintiffs in this case. Representing the defendants here is Mr. Jim Upshaw of Greenwood, Mississippi.

Madam Court Reporter, would you swear the witness, please.

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WALTER WILLIE DICKERSON, SR.

a witness called pursuant to notice, being first duly sworn in the above cause, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. BARRETT:

Q. State your name for the court, please, sir.

A. What?

Q. What's your name?

A. Walter Willie Dickerson.

Q. All right. Mr. Dickerson, how old are you?

A. I'm fifty-eight.

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Q. Okay. When were you born?

A. 4/27/29.

Q. Okay. The - where do you live?

A. [DELETED] just outside the city limits.

Q. All right, sir. Have you ever worked for The American Tobacco Company?

A. Yes, sir, for about thirty-two years.

Q. Okay. And when did you - are you retired now?

A. Yeah.

Q. When did you retire?

A. '79 - about March of '79.

Q. Okay. And you had worked for The American Tobacco Company for - continuously for thirty-two years prior to---

A. Yes, sir.

Q. ---March of 1979?

A. Not continuously. Now they laid us off in 1949 for three months and laid us off again in 1950 for three months. They laid us off February the 11th and called us back after July vacation each year, '49 and '50.

Q. Except for those layoffs, did you work continuously?

A. Yeah.

Q. Okay. Mr. Dickerson, what was the last job that

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you had when you worked for The American Tobacco Company?

A. I was working on the maintenance.

Q. Is - what shift was that?

A. They brought me up - I was working on third shift. They brought me up to second.

Q. Okay. Now I want to talk about that third shift. How many years did you work that third - the third shift?

A. Seven years.

Q. Okay. What years were they, approximately, to the best of your recollection?

A. Well, let's see. I've counted it out. I left there in '79, and I think I worked second shift eight years, so - anyway, I worked seven years third shift.

Q. Okay. Was that the last seven years that you worked?

A. No, I worked the last on second shift.

Q. Okay. And to your best recollection, what years did you work on third shift?

A. I'd say started off in - just - well, I just don't know. Don't know.

Q. Were you working the third shift during the 1970s?

A. Yeah.

Q. When you worked that third shift, did you work

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it continuously?

A. Yeah, a friend and I. There was two of us millwrights. We worked together fixing all the machinery that broke down.

Q. Okay. What was his name?

A. Bob Smith.

Q. Okay. The - I want to talk about this third shift. Who else - what other people would work on the third shift? Explain what the third shift was.

A. Third shift was - we had about - approximately twenty people clean-up crew. We called them a clean-up crew. They went around and cleaned this department, that department, and the other up, see.

Q. Okay.

A. Then your watchmens and then your air-condition and us.

Q. Okay. The - and there was a total of about twenty people that were on this third shift?

A. No, that was the clean-up crew.

Q. I see.

A. Plus the watchmens, plus the air-condition, plus me and Bob.

Q. Okay. How many - how many watchmen were there, do you know?

A. I can - I can just about count - guess them.

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But now, since they're set up like they are now, I really don't know.

Q. Okay. How many was it back in the '70s?

A. Let's see. We had one at the front door, one at the cafeteria, one at the combine, and had one down there at the power plant, one - and one down at the shipping.

Q. All right. So about five watchmen?

A. Yeah.

Q. About twenty clean-up crew. And I understand there were two mechanics, is that right?

A. Yeah, me and Bob.

Q. Okay. How many air-conditioning operators were there?

A. You know, I can't exactly say.

Q. Okay. About.

A. About, I'd say, two or three.

Q. Okay. What were the hours that this third shift ran?

A. From eleven till seven.

Q. Is that eleven p.m. until seven a.m. the next morning?

A. Yeah.

Q. Okay. And did that - how many days a week did that shift run?

A. Well, five days. At that time it was five days.

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But us mechanics would have to work on Saturdays sometimes when it broke down.

Q. Okay. The - I want to talk about any knowledge that you have that - what happened during this third shift, this nighttime shift concerning the tobacco being sprayed or gassed with chemicals. Do you know anything about that?

A. Well, yes. I had to work in it.

Q. All right. Did your supervisors at The American Tobacco Company tell you anything about what this chemical was?

A. Said it was poison, not get it on you; if you did, run to the medical department and get alcohol - was the only thing that would dilute it.

Q. Okay. What were you told about breathing it?

A. Not to breathe it. And it would, it'd cut your - it would cut your wind off.

Q. Okay. The - were you told anything about whether or not you should get it in your eyes?

A. That's right, sir. They had fountains close by where they shot that stuff. If you got it in your eyes, run over there and stick your eyes over that fountain. It had two streams of water coming up.

Q. Was it a - was it a water fountain, or was it - I mean a drinking fountain, or was it something else?

A. No. I reckon a man could drink it. It was hot.

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It was just warm - just---

Q. It was a special fountain for your eyes, is that what---?

A. Yeah. Well, yeah, a special fountain for my eyes - for your eyes, because the water wasn't cold enough to drink, just factory water.

Q. Where would these - where would this fountain be placed?

A. Well, they're placed in areas - most of the time you'll find them over in the prefab. Now I never seen one in the cigarette side.

Q. Okay. Did - did they give you any instructions about whether or not you were to wear a mask or gloves or anything like that?

A. Well, they started off - you had a rubber mask to go over your face and gloves that come up to here (indicating); but we come in on third shift, they're all locked up, we can't get to them. And then when I went on second shift by myself, I couldn't get to them, and I had to put this stuff out. The day shift would fill it up in jugs, set it in trolleys; then I had to go around and put them up in the racks.

Q. Okay. Let's talk about that, how you did that. You said you had to put it in jugs, this chemical?

A. Yeah.

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MR. UPSHAW: He didn't say he did that. I object to the form of the question.

A. I have done it, but---

MR. UPSHAW: He said the day shift did that.

Q. All right. Did you ever help put it in - put it in the jugs?

A. Oh, yes.

Q. Okay. Tell us how you would go about doing that.

A. You set a little old funnel - you've got a plastic funnel - down in the jug and just draw it out of the barrel.

Q. Okay. What would - what sort of labels would these barrels have on them?

A. Had crossbones.

Q. Crossbones?

A. Yeah.

Q. Okay. Did they - did they have any other sort of warning label besides that, do you recall?

A. That's all I seen, was just on the side of the barrel, had crossbones on it.

Now they was shooting a high percentage years ago; then they dropped it down and shot it longer, the timer. See, they had a timer.

Q. All right. We're going to get into that in a

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second. But this whatever it was, this material, what size containers would it come in?

A. About, I'd say, five quarts.

Q. Well, how would it would be shipped to the---?

A. Oh, in barrels. It was shipped in barrels to the company. Then you drew it out of the barrel.

Q. And put it into the---?

A. Into the container.

Q. All right. And how many different containers would you have to fill up?

A. Lordy mercy, I can't tell you how many was at the factory.

Q. Okay. And would there be more than one? A lot of them?

A. Lordy mercy, yeah. You'd go around and fill them. They'd assign one man. He'd fill them all day. And most of the time mine was already put in a trolley - filled and put in a trolley, and the stuff spilled all in the trolley - you could smell it - and the floor in there where you went to get it.

Q. Okay. Would the chemical have any effect on the - on the floor if it was spilled?

A. They washed it up with alcohol where they - where they used it. I never really paid no attention, but it was clean. You could see the alcohol where they washed

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the floor.

Q. Okay. Did - now where would you - how big were these jugs that you would transfer this material - this chemical to? How much would they hold?

A. They hold, I guess, a gallon or five quarts, a big jug, a gallon.

Q. All right. And what would you do with those five-quart jugs?

A. Well, you go up there - take a ladder and go up on the pole, take the old one off, bring it back down and set it down in the trolley and take the new one up there and screw the new one on.

Q. Okay. And how long would it take you, working second shift, to replace the empty jugs with the full jugs?

A. Lord, you couldn't do it in one night.

Q. All right. The - and where would - and you said these jugs were located in the - at the ceiling, the top of the building?

A. No, they was about halfway up a column.

Q. Up a column?

A. Column, yeah.

Q. And how many of them would there be in one room, do you know?

A. Well, now I could just only guess.

Q. Well, don't guess. Give us your best estimate.

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A. They got, over in the cut storage over there, I'd say, six to eight spraying at one time.

Q. Okay. And what about in the manufacturing room?

A. I don't know, but they had that many or more.

Q. Okay. And what about in the prefabrication room?

A. Well, the prefab, I'll just say they had - in each department they had about five.

Q. And what about the cutting room also?

A. Yeah, the cutting room, they had them up there too.

Q. Okay. Now how often would this spraying take place or gassing or whatever it's called?

A. Every night.

Q. Okay. The - tell the jury how this gassing or spraying took place. How would they do it?

A. Well, they had a timer setting up over here. They set that timer on how many minutes they want it to spray, and when it goes off, it'll spray for so many minutes or so many seconds, and then it just automatically kicked the valve out, see, here in one department, shooting it in another.

Q. Okay. Could you stand in there, in the room? What would happen if you were in the room while it was going on?

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A. Oh, Lord, that stuff would take your breath. You couldn't - you couldn't stand it.

Q. All right. Was it standard procedure for the employees that were involved in this to be outside the room or inside?

A. Had to stay outside. Supposed to be outside.

Q. All right. And the - how long would they remain - could they go back in the room as soon as it was over, as soon as this gassing was - how long did they have to wait?

A. Well, no. Two hours.

Q. Had to wait two hours?

A. Yeah, and the boys would turn the air-condition on to filter the area out, and - but they're some places we've got no air-condition. That stuff just hangs there.

Q. Okay. What sort of a smell - did it have a smell at all? If it did, explain what kind of smell.

A. I can't explain it. It's got a - some people can't even smell it.

Q. Okay. All right. Let's - could you smell it?

A. Yeah. I could tell you just as soon as I walked in a corner or a pocket where the air-condition hadn't blowed it out. The air-condition was just recycling it in the wintertime, going around and around and around.

Q. Was the production of cigarettes going on right

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during the spraying, or was this during---?

A. No. No. They wasn't nobody supposed to be on that floor.

Q. Okay. How many floors are in the factory - how many different floors?

A. Well, you've got five - let's see - four - four floors in cigarettes and four floors in cut storage bulk, and you've got your cutting, and there's building eight, building nine. You've got building ten.

Q. Was spraying going on in all these buildings?

A. At one time, yeah.

Q. All right. For how many years, to your knowledge, were you involved in this spraying?

A. Well, I was involved in that stuff for about seventeen years. When they brought me off of third shift and put me on second, unless I had a breakdown, I had to put that stuff up here and yonder, see.

Q. I see. So is it your testimony that this went on for at least seventeen years?

A. Yeah.

Q. All right. Now tell the Court whether or not there was any tobacco - open, exposed tobacco in the rooms where this spraying or gassing was going on.

A. Yeah. That was the purpose of spraying. Sprayed it directly on the tobacco, directly.

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Q. All right. What would the tobacco look like in that - I mean in those - in those rooms? I mean what was it - how was it---?

A. It was cut and it was ready to go in the cigarette. It runs off the bulk on conveyors, goes on over to the cigarette side, and they put it in cigarettes.

Q. All right. How long a period of time is it from the time that that tobacco is sprayed until the time - or sprayed for the last time until the time it's made into a cigarette?

A. I believe they told me three days it takes to run a bulk off.

Q. Is that---?

A. That's cut storage.

Q. Would some of it - that's the longest amount of time or the shortest amount of time?

A. That would be the longest.

Q. All right. So if - tobacco, then, would remain in that room for three days?

A. Yeah.

Q. And it would be sprayed, then, three times?

MR. UPSHAW: Don, we're going to have to object to your continuing to testify.

MR. BARRETT: All right.

MR. UPSHAW: We'd really appreciate it if you'd

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just go ahead and ask the questions.

MR. BARRETT: Let me - let me - I'll ask the question differently.

Q. How many times would the - under normal circumstances, would the tobacco in this cut storage room get sprayed from the time it was put in there until the time it was made into a cigarette---

MR. UPSHAW: Object to the form.

Q. ---if you know?

A. Well, it was according to how the bulk was running. You can't tell making cigarettes.

Q. Explain that the best you can.

A. Well, it's shot from the time it hits the cigarette factory, going through dall that process and everything. They shoot gas on it till it goes right in the cigarette, shoot the cigarette floors every night.

Q. All right. Well - so would the - my question is, Would the tobacco be - before it's made into a cigarette would it be gassed or---?

A. Gassed right on, yeah. They spray that gas on top of the bulk, see, and that thing - when it comes off on that belt that carries it to the floors, it's just stirring it up in the tobacco.

Q. I see. All right. And would that happen - in the ordinary course of the manufacture of the cigarettes,

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would that happen more than one time to the tobacco before it got made into a cigarette?

A. Yeah.

Q. Okay. Approximately how many times would you say?

A. When I was working - I've been out of there ten years - I could tell you - if that bulk broke down, it's liable to be sprayed right there five times, if that section is broke down.

Q. And what - after it goes from cut storage, tell this jury whether or not there's any sort of way of cleaning that material off the tobacco?

A. No, no way.

Q. Is there any process to remove this - whatever chemical it is from the tobacco?

A. No way if you spray right on it.

MR. UPSHAW: We object to the form of those questions. I mean that wasn't his duties. He didn't do that.

Q. The - was the - was the tobacco washed in any way?

A. No.

MR. UPSHAW: We're objecting to all this line of questions, even though we're reserving objections.

Q. The - do you have personal knowledge as to

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whether or not the tobacco was in any way washed or cleaned after it went through this---?

A. No, it wasn't washed.

Q. Okay. Mr. Dickerson, what about the cigarette-making machines themselves, would they receive this---?

A. They sprayed - they sprayed them too.

Q. Okay. Would there be actual cigarettes in---?

A. Yeah, cigarettes out there on the machines.

Q. Okay. What was done by The American Tobacco Company to prevent those cigarettes from getting this spray on them?

A. They didn't prevent it. They just - a lot of them were laying right there getting it. It was a fog going into it.

Q. I'd like for you to describe - we've talked about spraying and gassing. What did it look like after it - when it came out of these containers, what - describe---

A. I stood at the door - glass door and looked through the door, and it comes out in a fog, and that stuff will keep breaking down and breaking down smaller and smaller, the particles of it, until you can't - it looks like a smoke---

Q. I see.

A. ---after it breaks down. Them bugs has got a

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tough shell on them.

Q. What bugs is that? Where are these bugs?

A. Oh, they're all over the plant.

Q. Okay. Are they in - are they on the tobacco too?

A. Yeah, until that spray kills them.

Q. What's done to remove the dead bugs from the tobacco before it's made into cigarettes?

A. I don't know. I ain't never been in there to catch them, pick them up.

Q. Were you in a position to see?

A. Yeah. I was all over the plant.

Q. Was there anything done to keep those bugs out of the - dead bugs out of the cigarettes?

A. No. Them bugs lays - you can go up there on top of them cooler shakers and shake that - wipe that dust off, and them little old, tiny white worms are up there.

Q. Okay. And what happens to keep the worms out of the - out of the cigarettes?

A. You spray it. Spray it.

Q. Well, I assume the spray - the spray kills the worms, is that right?

A. Yeah.

Q. All right. And what happens then to those worms that are in the tobacco? Are there worms on---?

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MR. KING: Object to the form.

Q. All right. Are the worms on the tobacco?

A. Yeah, they're in - they're on it.

Q. Okay. Well, what happens to the worms after they are killed by the spray? Is anything done to remove them?

A. No.

Q. Okay. Have - while we're on that subject, have you ever seen any rats or mice in the tobacco?

A. No, not in the tobacco. On a machine - my machine one night I got a rat's - a mouse's tail in a cigarette. How he got in that tobacco - I reckon that gas killed him. He come on through my making machine, and his tail was in the cigarette. The catcher found it. The way they're running it now, they never would find it.

Q. Did they do - was anything done to remove that batch of cigarettes?

A. Oh, yeah. We had to pull the feed on the machine to get all that tobacco out.

Q. Did you ever find the rest of the mouse?

A. Yeah, we found it and cleaned it up, throwed the tobacco back in there and---

Q. Did you ever see rats in the area of the tobacco - of the stored tobacco?

A. Over in the prefab, not the cut bulk now, but

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over in the prefab, I seen - yeah, they're big as cats over there - used to be. I don't know what happened.

Q. Would the rats be in the area where they could get on the tobacco itself?

MR. UPSHAW: Don, I mean all you're doing is - I mean---

A. Yeah, they get it there.

MR. UPSHAW: Mr. Dickerson, please, sir - and out of deference to you, we're not making objections; but, Don, really, you're a good lawyer and you don't have to just keep testifying. Mr. Dickerson is perfectly capable of doing it if you ask him appropriate questions without us having to object. Please quit leading him.

Q. Tell the jury whether or not there are any - that you ever saw any rats on the tobacco in the prefab area.

A. No.

Q. Okay. Did you ever see them in the vicinity of the tobacco?

A. Yeah.

Q. Was there anything to keep them from getting on the tobacco?

A. No.

Q. Mr. Dickerson, I'm going to ask you, Did you

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ever - were you ever given any type of test or blood test in connection with your employment at American Tobacco Company?

A. Yeah, we had to take a blood test ever so many months to see if that gas got in our blood.

Q. Okay. How often did you have to do that? How many years did you have to do that?

A. Well, I done it - you do it every - well, for about seventeen years, I reckon, because---

Q. Okay. Did they ever - do you know - were you ever given the results of your blood tests?

A. No.

Q. What were you told by The American Tobacco Company as to what the purpose of these blood tests were?

A. Well, it works on your nervous system.

Q. What works on your nervous system?

A. That gas they're shooting it with - chemical.

Q. Well, what did they tell you - why did they tell you they were giving you the blood test?

MR. KING: Object to the form.

Q. Did they ever tell you why - ever give you any reason for giving you the blood test?

A. No, they never did. They didn't, but some of the boys on the crew said it was to keep it from getting your---

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MR. UPSHAW: That's hearsay, Don.

A. ---getting in your blood. That's all I know.

Q. What about your supervisor? Did your supervisors ever explain why you were taking these blood tests?

A. No, never did.

Q. Okay.

A. They just said it was on account of that gas, that's all.

Q. That's all the supervisors told you?

A. That's all, just on account of that gas.

Q. Okay. They didn't tell you anything specific?

A. (Witness shakes head negatively.)

Q. All right. Now did - were Pall Mall cigarettes - we've talked about the cigarettes that were manufactured there. Were Pall Mall cigarettes manufactured in this facility?

A. Yeah.

Q. Tell the jury whether or not Pall Mall cigarettes received this same type of---

A. Yeah.

Q. ---gassing or spraying treatment that the other cigarettes received?

A. All - all of them was.

MR. UPSHAW: We object to the form of that

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question.

Q. Well, I'll ask the question a little bit differently. Did the - tell the - tell the jury the - if there were any differences between the handling of Pall Mall cigarettes and the other cigarettes that were manufactured there concerning - as far as the spraying that you've talked about.

A. Same thing.

Q. Okay. Did you ever have any contact - accidental contact with this material yourself?

A. Yeah, they shot me several times - sprayed me while I was in that department.

Q. How did you happen to be in there? What happened?

A. Was in there fixing to work on a machine.

Q. I see. And what happened?

A. I looked around and that spray hit me right in the face.

Q. Okay. And what did it do to you?

A. Well, I couldn't shave for three or four days, it burnt my skin so bad.

Q. Okay. Did it affect your eyes at the time?

A. Yeah. I had - I had to feel my way to a window to get my face out the window so I could get my breath, and my eyes was on fire. As soon as I got my breath I run to

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that fountain and sprayed the water in my eyes.

Q. Yes, sir. After that, in the days following that, did you - did you have any further problems with your eyes?

A. Oh, for weeks my eyes just burnt like fire.

Q. Okay. And did you ever have any - thereafter did you ever have any - experience any loss of sight?

A. Yeah.

MR. UPSHAW: Don, we object to the form of these questions.

A. I lost my eyesight within two months completely, just outside vision.

Q. All right. What is your - what vision do you have now?

A. I forget what that doctor said over there at Southeastern. It's very little. I can't - I can't tell who you are from here.

Q. You can't see me to tell---?

A. I can see - I can see you, but as far as seeing you well enough to describe you or know you again when I met you, I don't.

Q. Can you see - can you watch a television and see what's on a television?

A. No.

Q. Can you read a newspaper or---?

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A. No.

Q. Can you read anything?

A. No.

Q. And when did this loss of eyesight occur in relation to this spraying incident you talked about?

MR. UPSHAW: I object to the form of that question. Also, it's totally irrelevant and immaterial.

Q. Go ahead and answer the question.

A. Well, it was in the same year that I had to retire. And I went back to a doctor up there, and he said, "Lordy Mercy, you had perfect vision -" not perfect, but good vision, I believe he said, '76. And, yeah, when they went, they went.

Q. All right, sir. When you say "they," are you referring to your eyes?

A. Yes, sir.

Q. And that was how long after you had been sprayed in the face with this - you were sprayed in the face?

A. In a matter of, I'd say, three months.

Q. Okay. Now you described this fog that came out. How long would that fog linger in the room?

A. Well, in three to four minutes it was right down till it looked like a smoke in there instead of fog.

Q. Yes, sir.

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A. See, them bugs is so tough it takes something to penetrate the hide, to be able to get into them, and that stuff just keep breaking down till you - you couldn't see it.

Q. Now are you familiar with fabricated tobacco?

A. Yeah, fabrication, I'm familiar with that - well, the whole plant.

Q. Okay. Tell us how the - what did they make the fabricated tobacco out of?

A. Well, it's synthetic tobacco. They get the dust up - your dust and stuff and ship it - they was shipping it to Richmond. I don't know what they're doing now.

Q. But they would--- All right.

A. Yeah. They'd run it through the cutting machine, chop it up, and---

Q. You said dust. Where would the - where would the---

A. Dust come out of tobacco.

Q. Where would it come - where would you get it?

A. Most of the time you get it off the floor.

Q. Off the floor where?

A. Everywhere - any - everywhere in the plant, see.

Q. All right. And would that be the floor that people walk on and work on?

A. Yeah.

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Q. How often would they - how would they get it off the floor?

A. They sweep it up, blow it up.

Q. And how often would they do that?

A. Every night. In fact, that was the clean-up crew's job.

Q. I see. And would - what would be done to separate the tobacco on the floor from, say, for example, something that somebody had stepped in - some worker had stepped in and tracked into the factory?

A. Oh, they just throw it in the trolley.

MR. UPSHAW: I object to the form of the question.

Q. Sir?

A. They just throw it in trolleys, and some of that's shipped - started shipping it to Durham, and then so much of it was screened back through a shaking machine that shakes, with a screen on it, and gets all the dust back out of it. And they had operators over there where they'd feed it back in.

Q. Okay. Was there anything - how was the - what would be on the floor that they would sweep up besides tobacco?

A. Well, dust.

Q. Anything else?

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A. Whatever's down there.

Q. And all of that--- Well, strike that.

MR. UPSHAW: Do you want to testify some more, Don?

Q. Just a moment, Mr. Dickerson. I have just a very few questions here left. Did - you said that it was difficult to shave or you couldn't shave for how long a period of time after the---?

A. I believe it was four days I couldn't shave.

Q. Okay. Were you - and tell the jury why - why couldn't you shave?

A. That gas burnt my skin so bad till I didn't want to touch it, let alone put a razor on it.

Q. I see. What is the state of your health right now, Mr. Dickerson?

A. I really don't know. I had a colon cancer cut out, and I'm bleeding somewhere inside, and they're trying to find out where I'm bleeding from.

Q. Do you have cancer anywhere else?

A. We don't know yet. I think I have cirrhosis of the liver. I've got that, I know.

Q. All right, sir. Okay. Just a minute, Mr. Dickerson. I'm going to step out and talk to my other lawyers here. I think I'm through - or just about through.

MR. BARRETT: Let's go off the record.

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(Discussion off the record.)

Q. Mr. Dickerson, just a couple of points that we may not have covered completely, and then we'll be through. Were the rooms where the spraying took place - would they be sealed off or were they open during the time of the spraying?

A. They closed the fire doors on it.

Q. Were people allowed to come in the room?

A. No.

Q. How long would they have to stay out?

A. A couple of hours. They - they hung signs up when they shot that gas that said "Restricted Area. No Admittance."

Q. Okay. Now--- Excuse me go ahead.

A. After they put that call system in there, the guy would forget to call it out. You'd look around and the gas would be spraying.

Q. I see. And is that what happened to you?

A. Yeah. He was supposed to call it out on the intercom, see, and he didn't call it out.

Q. Mr. Dickerson, did - I want to talk briefly about this reconstituted tobacco. Do you know whether or not it was used in Pall Mall cigarettes?

A. Now, you know, I just don't know.

Q. Was there - was it - did you make Pall Mall

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cigarettes?

A. Yeah, they made them there. And it was bound to have been in there because they run it in - run it in the tobacco there.

Q. Was the - and that reconstituted - tell us again what that reconstituted tobacco used in that plant was made out of.

A. It was dust off the floors and machinery, the tops of them, they'd sweep them off. They'd take the dust and put it in trolleys, carry them down there and weigh them down at the scales, and they spread it out from here to yonder. I understand they're shipping some to Durham and, in return, Durham was shipping us back some.

Q. Okay. Give me the - do you know the names of some of the other workers that worked - that may be retired now, that were working back in this time that you were working that would know about this spraying or gassing that you've talked about, or that should know?

A. Yeah. Fred Strader. He was in here yesterday.

Q. Fred who?

A. Fred Strader.

Q. Okay. How do you spell that, or do you know?

A. I don't know. It's Strader, F-r-e-a-d, I reckon.

Q. Do you know anybody else?

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A. Bob Smith. Did you get him?

Q. Bob Smith. All right, sir. Do you know any - give me some other names.

A. Herbert Sommers.

Q. All right. Herbert Sommers?

A. Yeah.

Q. All right.

A. Carl Banes.

Q. How do you spell Banes?

A. I don't know.

Q. Okay. Who else?

A. All right. Thomas Crews.

Q. Okay.

A. Harold Gentry.

Q. All right, sir. Do these people still live around the [DELETED]

A. As far as I know.

Q. Okay. All right. Can you think of anybody else?

A. Not right off. George Thurman, but he's dead. Most of the rest of them are dead.

MR. BARRETT: Just a second, please.

(Discussion off the record.)

(Whereupon, a brief recess was taken while the witness was taken to X ray.)

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MR. BARRETT: Mr. Dickerson, that's all the questions I have. Thank you very much. Mr. Upshaw, your witness.

- - - - - - - - -

CROSS-EXAMINATION

BY MR. UPSHAW:

Q. Mr. Dickerson, I'm Jim Upshaw from Greenwood, Mississippi, and I represent The American Tobacco Company in a lawsuit filed by Mr. Barrett and Mr. Davis's client, and I want to ask you a few questions.

A. Yeah, go ahead.

Q. All right, sir. I guess you've been noticing me sitting over here and taking a few notes as you testified?

A. Yeah.

Q. One of the things I want to ask you is whether or not, during this recess that we just had - we had about an hour-and-fifteen-minute break. It's my understanding that you had some X rays made?

A. Yeah.

Q. And you had some - you ate, is that correct, sir?

A. What now?

Q. You had your meal; you ate?

A. Oh, I ate a few cookies there, yeah.

Q. That's all right, sir. I wanted to ask you if

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you've been given any types of medication or anything during this period of time that would affect your---?

A. I was given my insulin - a shot of insulin and a nerve pill. That was it.

Q. Yes, sir. Are you - do you feel like continuing with this deposition---

A. Yes, sir.

Q. ---and answering and responding to my questions?

A. Yeah.

Q. I may be thirty minutes or more is the reason I'm asking you that. I don't want to abuse you at all. I want you to be comfortable and able to do it, and it's perfectly obvious that---

A. Uh-huh, yeah.

Q. ---you're not feeling too well. Are you feeling like going ahead?

A. Yes, sir.

Q. All right, sir. When were you admitted to the hospital on this admission, sir, what date, if you can recall?

A. Oh, lordy. I've been here about four weeks.

Q. You've been in the hospital four weeks?

A. Yeah, in the hospital.

Q. Yes, sir. Do you know when you're scheduled to be discharged from the hospital?

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A. No.

Q. Would you give us the name of your admitting or treating physician.

A. Dr. Smith.

Q. What's his first name, please, if you know? Maybe your daughter could help us on that.

MR. BARRETT: Leroy Smith.

A. Leroy Smith. He's black. He's black.

Q. Yes, sir. Is he [DELETED]

A. Yes, he lives in the [DELETED] vicinity.

Q. Yes, sir. Was he your treating and admitting physician or your surgeon or what?

A. He was just my surgeon. My other doctors are - Dr. Payne, Richardson, Lovin and Crosby is my factory doctors.

Q. Yes, sir. All right.

A. And Smith - they just called Smith in to do the operation.

Q. He actually did the surgery---

A. Yeah.

Q. ---you've described as a colon---?

A. Yeah, colon cancer. It's the same thing, he said, that the president had.

Q. All right, sir. And how long ago was that surgery performed?

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A. A little over a year.

Q. It was not performed during this admission?

A. No.

Q. It was a year - year ago?

A. That's right.

Q. All right, sir. Well, then, this admission, the four weeks or more that you've been here this time, you've had no surgery, you're just being treated for some internal bleeding, is that correct?

A. Internal bleeding, yes, sir.

Q. Yes, sir. And some cirrhosis of the liver, I believe you said?

A. Yeah, he said I had cirrhosis of the liver and some little old polyp cancers coming up on my lungs.

Q. Yes, sir. Coming up on your lungs or on your colon?

MR. BARRETT: Lungs.

A. Lungs and colon.

MR. UPSHAW: I can ask him, Don. You don't need to testify for him.

A. They're trying to get - they're trying to pick - they think that blood is coming either from my liver, stomach, or little polyps in my colon.

Q. All right, sir. Thank you, sir. Was this admission - this hospital admission or stay that you're

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here now on, was it a scheduled admission to the hospital, or was it an emergency admission?

A. Well, it was an emergency admission.

Q. Yes, sir. Were you having trouble at home and---?

A. Yeah, I was bleeding. I had lost so much blood I couldn't get up out of the bed.

Q. Yes, sir. Did they have to get an ambulance to bring you to the hospital?

A. No. My sister and my brother - my sister and my brother's wife brought me up here. I could walk a little, but I couldn't carry all my weight on my feet. They brought me up here in the car.

Q. Mr. Dickerson, you have signed - or at least placed your mark on an affidavit that was filed in the Circuit Court of Holmes County, Mississippi, in this lawsuit. Mr. Barrett questioned you about some of the things and remarks that you made in the affidavit. Could you tell us when you were contacted by anyone about giving an affidavit in our lawsuit? How long ago was that?

A. My lawyer.

Q. Who is your attorney?

A. C. Orville Light.

Q. C. O. who?

A. C. Orville Light.

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Q. Light like the fixture up here, l-i-g-h-t?

A. Yeah. Yeah.

Q. And where does Mr. Light practice?

A. He's got an office in Madison.

Q. In Madison, North Carolina?

A. Yeah.

Q. Is that close by here?

A. It's in twenty-five miles of Reidsville.

Q. Well, I notice that on the - on the affidavit that Mr. Light did not witness it but that the gentleman who's here today, the attorney---

MR. UPSHAW: How do you pronounce your last name, please, sir?

MR. KERNODLE: Kernodle.

Q. Mr. Kernodle witnessed your deposition [sic]. Was Mr. Kernodle present when you gave your deposition [sic]?

MR. BARRETT: You mean affidavit.

Q. I mean your affidavit.

MR. UPSHAW: Yes, sir, that's exactly what I mean.

A. I gave one to him.

Q. To Mr. Kernodle?

A. Yeah. And one to my lawyer way back.

Q. Mr. Light?

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A. Yeah, Mr. Light, way back.

Q. Well, the date of this deposition [sic] here---

MR. BARRETT: You mean - excuse me - affidavit.

Q. ---affidavit - I keep saying affidavit. I apologize. I'm talking about these four or five pages that you signed in the presence of Mr. Kernodle and Mrs. Simpson.

A. Yes, sir.

Q. And it was given on the 8th day of September 1987?

A. Yes, sir.

Q. So that had to be given here in the hospital, then?

A. Right, right here in this bed.

Q. Yes, sir. Who contacted you about giving that affidavit?

A. Mr. Kernodle.

Q. How were you aware of Mr. Kernodle, if he---?

A. I wasn't - I didn't even know him. Still don't know him.

Q. He's not your attorney, is that right?

A. No.

Q. All right, sir. Well, how did it come about that the affidavit was given and even set up through Mr. Kernodle? Did Mr. Light arrange for that?

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A. I believe he - he must have, because I didn't talk to anybody other than him.

Q. Yes, sir. Was Mr. - you mean Mr. Kernodle?

A. Yeah, Mr. Kernodle.

Q. Was Mr. Light present---

A. No.

Q. ---when the affidavit was given?

A. No.

Q. Who is Mrs. Simpson? Do you know her - Mrs. Anne B. Simpson?

A. Anne B. Simpson.

Q. She witnessed your deposition.

A. Yeah. She's a notary here at the hospital.

Q. Oh, she's here at the hospital?

A. Yeah.

Q. This was given---

A. I think.

Q. This deposition [sic]---

MR. BARRETT: Affidavit.

Q. This affidavit - I'm sorry, sir. I keep interchanging the words. We're doing your deposition today. I'm referring to the affidavit that was given on the 8th day of September here in the hospital.

A. Yes, sir.

Q. It's handwritten. Did Mr. Kernodle or

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Mrs. Simpson write this deposition down, or do you know?

A. Mr. Kernodle.

Q. All right, sir. So he is the author of this deposition [sic]? I guess he asked you questions---

MR. BARRETT: Affidavit, Jim.

Q. I guess he - the affidavit. I guess he asked you questions and you gave him answers?

A. Yes, sir.

Q. And he reduced it to writing, is that correct?

A. Yeah, that's right, and she verified it.

Q. And was it read back to you?

A. Yes, sir.

Q. Was that by Mrs. Simpson?

A. No, that was by - by him, and Mrs. Simpson was standing there looking at the writing.

Q. And then you affixed your mark to it. Is the reason that you sign your signature with a mark is your impaired vision, the fact you can't see too---?

A. That's right, on account of my eyesight.

Q. Yes, sir. And Mr. Kernodle and Mrs. Simpson witnessed this---

A. Yes, sir.

Q. ---is that correct?

A. That's right.

MR. UPSHAW: We'd like to introduce as an

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exhibit a copy - a clean copy of his deposition [sic], Don.

MR. BARRETT: We have no objection.

MR. UPSHAW: Let her mark that Exhibit 1 or Exhibit A.

MR. BARRETT: All right. Let it be marked as Exhibit 1 to the testimony of Mr. Dickerson.

(The above-referred-to (document was marked (for identification as:

(DEFENDANTS' DEPOSITION (EXHIBIT NO. 1

Q. I'll try to keep these words straight, Mr. Dickerson. I want to get into your background just a little bit, if I may, sir. I believe you've testified that you're fifty-eight years of age---

A. That's right.

Q. ---as we're here today?

A. Yeah.

Q. It is true, isn't it, sir, that you have no educational background whatsoever as a chemist?

A. As a chemist?

Q. Yes, sir.

A. No.

Q. What is the extent of your education - your formal education?

A. Well, I started off farming.

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Q. Yes, sir, but I mean your actual going to school. How far did you go?

A. Oh, I went to school to the eighth grade, and then I - I took up a correspondence course through the mail, machine shop, mechanical drawing, and blueprint reading.

Q. I believe, if my figures - or if my mathematics is correct, you apparently went to work here for American Tobacco Company in Reidsville when you were around seventeen or eighteen years of age, is that correct?

A. Eighteen, October the 24th, 1947.

Q. And worked until age fifty except for a couple of three-month layoffs?

A. Yeah, that's true.

Q. Yes, sir. And so you've virtually spent your entire working life here in Reidsville with The American Tobacco Company---

A. That's right. True.

Q. ---is that, sir?

A. That's true.

Q. And you departed or stopped this employment as a result of a disability, isn't that correct, sir?

A. Yes, sir, they - they put me out.

Q. Well, I mean it was an impaired vision.

A. On account of my vision, I couldn't see, they

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put me out on retirement.

Q. Yes, sir. On a disability retirement, is that correct?

A. Yeah, disability.

Q. All right, sir. Now you have no formal training whatsoever, then, in the field of chemistry, even to the extent of high school chemistry, is that correct?

A. No, I don't know nothing about no chemistry.

Q. You're just like me; I don't know anything about it either. Nothing wrong with that.

Do you have any job experience working with chemicals or as a chemist other than around these chemicals you've described?

A. No. Just them chemicals we worked with up there.

Q. Yes, sir. Well, then, you have no educational background, then, do you, sir, as a pesticide or chemical expert? You don't---

A. No, I'm no expert.

Q. Yes, sir. You don't consider yourself such?

A. No.

Q. And you have no job experience as a pesticide or chemical expert, do you, sir?

A. No.

Q. You just handled this chemical?

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A. I just handled it when they told me to.

Q. Yes, sir. As you've described it---

A. Yeah.

Q. ---when Mr. Barrett was questioning you?

A. Yeah. When they told me to put it out, I put it out.

Q. Yes, sir, I understand that. That's when your supervisor or your foreman, or whatever they called him, said, Okay, Walter - or Mr. Dickerson - let's do it, you did it, correct? Is that correct?

A. That's right.

Q. In fact, you don't have any idea, do you, sir, what the chemical was or is that was used?

A. You know, it's been so long until I can't remember, but it had crossbones on the barrel.

Q. Yes, sir, showing that it was poisonous, of course?

A. That's right.

Q. And that you shouldn't drink it or---

A. That's right.

Q. ---or get it on your skin or whatever, is that correct, sir?

A. Yeah.

Q. I believe even bottles of medicine you can buy over the counter have that on them, don't they, like

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iodine?

A. Oh, yeah. Yeah.

Q. Yes, sir. Did you ever hear the words "DDVP" or---

A. Yeah.

Q. ---vaponia, anything like that?

A. Yeah.

Q. Does that ring a bell with you?

A. Yes, sir.

Q. Now in your affidavit, sir, you mentioned the, quote, "spraying," end quote, system. As a matter of fact, the way you described it on direct examination, it's more of a gassing system, isn't it, sir?

A. Well, they call it spraying, gassing. I don't know what all. But they have got the system hooked up on air and electric, and it sprays so many minutes, seconds, or whatever, and automatically cuts off by that timer.

Q. Yes, sir. You described that real well on questions by Mr. Barrett. But the point I'm making is, in your affidavit you use the word "spraying" interchangeably with the word "gassing" and "gas," and in your direct testimony, on questions by Mr. Barrett, you mentioned how quickly after it came out of the nozzle it broke down---

A. That's right.

Q. ---into a gas, that is, into a smoke - when you

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observed it through the glass door. Do you remember that?

A. Yeah.

Q. And you saw it within a matter of minutes break down from a fog into a smoke?

A. Yeah.

Q. Then into an invisible gas?

A. Right.

Q. That's correct, isn't it, sir?

A. Invisible - I don't know whether you call it gas or what. What would you call it?

Q. I don't know what I'd call it. You've called it gas several times.

A. Well, that's what we called it down at the plant.

Q. Yes, sir.

A. That's where I got the name from.

Q. Yes, sir. And as a matter of fact, after it became invisible, you don't know what happened to it, do you?

A. Oh, it breaks down. The contents just keeps on breaking down.

Q. You've told us that. You told Mr. Barrett that real well. It come out as a fine fog?

A. Yeah.

Q. It turns into - you was observing it as a

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smoke - kind of turned into what looked like a smoke?

A. Uh-huh.

Q. And then turns into a gas that you can't even see?

A. That's right.

Q. So what happens to that gas, all you know is what you've been told, is that correct, sir?

A. No, I've seen it.

Q. How can you see something - what happens to something that's---?

A. Through the window.

Q. But how do you watch something that's invisible after it---?

A. Oh, it's there. You can smell it. You just stick your head through the door.

Q. I understand that. You stayed out of there two hours, didn't you?

A. Yeah.

Q. Yes, sir. Because you had been told it was dangerous?

A. That stuff will kill you.

Q. Well, it was designed to kill insects, wasn't it, sir?

A. Yeah. The---

Q. Shortly after---

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MR. BARRETT: Let him answer the question.

MR. UPSHAW: Okay.

Q. Yes, sir?

A. The shell on them bugs is so tough till it has to have something powerful to penetrate that shell on that bug to kill it. If you could see one, you'd know what I was talking about.

Q. Yes, sir, I've seen them.

A. You can't--- You have?

Q. Yes, sir.

A. Well.

Q. All right, sir. I understand that. But what I'm saying is that it comes out as a mist or a fog?

A. Yeah.

Q. Then it becomes - it starts looking like smoke, and then it becomes an invisible gas, clear?

A. Well, I can't see it. After it keeps breaking on down for, oh, four or five minutes, breaking on down, I can't see it.

Q. Well, you did say on direct examination it became clear where you couldn't see it?

A. Well, it didn't come clear, but it---

MR. BARRETT: He didn't testify to that on direct.

A. No, I didn't testify to that.

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MR. UPSHAW: Well, Don, he either did or he didn't. I mean you don't have to - you can object to my question, Mr. Barrett.

MR. BARRETT: I object to your question.

MR. UPSHAW: All right.

Q. Indulge me just a moment, sir. Your exact question [sic] was it fogged for three or four minutes, it breaks down quickly, looks like a smoke; it keeps breaking down till, quote, "you couldn't see it," end quote. I submit to you, sir, that's what you said.

A. Uh-huh.

Q. And isn't that the truth?

A. Yeah.

Q. All right, sir. So, then, it's something you can't see or it's something that's invisible, isn't it? If you couldn't see me, I'd have to be invisible?

A. A person could walk in it and not know it. Some people can't even smell it, but I can.

Q. I understand that. You could smell it. Your sense of smell - you could still smell it?

A. Yeah. I didn't smoke.

Q. But your sense of sight back then - and you said your sight back then was good?

A. Yeah, it was good.

Q. And you couldn't see it, it had broken down into

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such a clear gas?

A. That's right.

Q. So then what happened to that clear gas - you don't know what happened to it until they ventilated it out of there, do you, sir?

A. It was settling on the - going through the - well, it's settling on everything, you know.

Q. How do you know that? How can you tell what something that's invisible is settling on?

A. I can pick up some of the dust off of - off the top of the machines and smell it in it. Now it's settling - it's so powerful it's penetrating that dust, tobacco, just like a vacuum system they've got over there on them hogsheads.

Q. How do you know that, sir, that it's penetrating anything?

A. Well, you can - you can pick it up and smell it.

Q. You mean after the two hours is over and you go back in there?

A. Yes, sir, you can walk in corners and smell it where there was no ventilation. In departments where they don't air-condition, lordy mercy, it hangs in there till - how long I don't know. When my shift's over, I'm gone.

Q. Do you know what is done to the tobacco, Mr. Dickerson, when it comes into the plant - into the

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manufacturing plant from the warehouse or over at bulk storage to get rid of the bugs, if there are any bugs?

A. They're there. Lift the top of the hogshead up and they've done eat a inch down in the tobacco.

Q. That's when it arrives from the warehouse?

A. When it arrives from the sheds down there, yeah.

Q. Now do you know what's done when it comes into the plant in the state you've just described to get rid of those bugs?

A. They spray it.

Q. Isn't it a fact, sir, that it's heated to a hundred and eighty degrees Fahrenheit---?

A. Yeah. It goes through that vacuum system.

Q. Yes, sir. Let me finish my question, if you will, sir. Isn't it a fact that when it comes in, that it's heated to a hundred and eighty degrees Fahrenheit for twenty to twenty-five minutes before it goes to the bulk storage to kill those bugs that come in with it? Isn't that a fact?

A. That's not to kill the bugs. That is to pull a vacuum on that tobacco. They make it - it's hard as a rock. They pull a vacuum on that tobacco to where it softens the whole hogshead up.

Q. Do you deny that a hundred and eighty degrees Fahrenheit for twenty to---

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A. Well---

Q. Wait just a minute. Wait just a minute, sir. Do you agree that a hundred and eighty degrees Fahrenheit heating of the tobacco for twenty to twenty-five minutes - do you deny that kills the bugs that are in it?

A. I don't know.

Q. All right, sir. Isn't it true, sir, that the pesticide that you've testified about is used to kill bugs in the manufacturing plant and not bugs that are in the tobacco?

A. Bugs that are in the tobacco. You - if you've ever been in there, you can pick it up by the handfuls, the dust off the top of the machines, and there's little, old white - just hatched out, just hatched out. After it leaves that machine you're talking about, a hundred and eighty degrees---

Q. Yes, sir.

A. It goes to one to a hundred and seventy degrees---

Q. That's correct.

A. ---your drying machines down there, and then after that your bugs gets in it, bugs on the manufacturing side. You'll see cigarettes that holes have been eat through where they've made cigarettes with the bug egg in them.

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Q. All right, sir. And those cigarettes are rejected and thrown out, aren't they?

A. How do you know? They go right on through there. They're making, I'd say, about two hundred packs a minute, and a human hand has never touched it.

Q. Have you ever stood there and watched the manufacture of---?

A. Yes, sir. I run one for eight years.

Q. And doesn't it reject cigarettes just by the second?

A. That's bad places on the cigarettes.

Q. Isn't it true, sir, that the pesticide that you've testified about, in fact, is used to kill the bugs that are in the plant? These are flying bugs and they fly at night, don't they, sir?

A. I don't know whether they fly or not. They look like they can.

Q. Yes, sir. Mr. Dickerson, you've been in the plant for seven years or more working third shift at night, and up in the upper reaches of the plant you've seen these bugs flying around, haven't you, sir?

A. Oh, you see all kind of bugs. They've got - they used to have bug catchers up there, but---

Q. Yes, sir. As a matter of fact---

MR. BARRETT: Let him answer. He's not through.

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He said "but."

Q. Okay. Go ahead if you've got any more to say.

A. Yeah, they've got bug catchers - they used to have - to catch all different kind of bugs, to see what kind of bugs are getting in there. But there's one special bug that gets in that tobacco when it comes in the plant. I go over there and pick me off some. I chewed tobacco, and I had to get way down in that barrel to get me some tobacco that the bugs hadn't done eat up - eat on - eat on - the bugs had eat on.

Q. Yes, sir. Do you know anything about growing tobacco?

A. Yeah. I farmed.

Q. Bugs attack tobacco from the minute it comes up out of the ground---

A. Oh, yeah.

Q. ---until you get it a finished product and put in a package, don't they, sir?

A. That's right. And it's gassed from the plant bed to the cigarette.

Q. It has to be gassed, doesn't it, sir, or you couldn't grow it and you couldn't manufacture it?

A. That's right.

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Q. Isn't that right, sir?

A. Yeah. They gas the plant beds. They spray

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tobacco for worms, put poison on it for that, and it's poisoned from the time it comes up till it goes in that cigarette, and I've never seen none washed.

Q. Well, what I want to ask you about is - we'll get back now to - I guess you've agreed with me, though, haven't you, to digress a little bit, that we couldn't grow nor produce nor manufacture cigarettes without pesticides to fight the bugs, could we?

A. That's the way it looks.

Q. And I assume, even though you have no background in chemistry, you're aware of the fact that the chemicals that are used, including the chemical in this plant, is approved by the U. S. Government Environmental Protection Agency for this purpose. Are you aware of that?

A. I assume. I don't know it.

Q. Did you know that the particular chemical that we've talked about is also used in dairy barns around milk and cows?

A. I never had any experience at that.

Q. Do you know whether or not it's used - or can you deny that it's used in chicken houses when we grow poultry?

A. We've got powders. I raised chickens. Powders were shaked around on the chickens and all through the lot.

Q. I'm talking about DDVP. Do you know---?

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A. No, not that. No. No, sir.

Q. You don't know whether it's used or not?

A. I don't know whether you can buy it or not. Nothing but a company can buy it.

Q. Well, then, you just don't know about that, is that correct?

A. I just don't know about that. It's not - I've never seen it at no market nowhere in my life.

Q. Well, did you ever go to a produce or a farm supply store and tell them you wanted to buy some DDVP?

A. No.

Q. You've never asked for any, have you, sir?

A. No, I've never asked for it, but I've never seen it, except at American.

Q. Well, isn't it true, sir, that the pesticide that we're talking about does not penetrate into the tobacco but is a gas in the atmosphere of the room?

A. It penetrates the tobacco.

Q. All right. Isn't it a fact that the tobacco that's swept off the floor, that you talked about a few moments ago, sir, is actually thrown away into the dumpster, what is swept off the floor?

A. No.

Q. What is - have you ever swept it off the floor?

A. Yes, sir. Tobacco and dust, they save

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everything, man. They're just like a hog. They save everything but the squeal, and they put that in that rubber doll.

Q. Are you talking about - you're talking about the dust is in the tobacco---?

A. Yeah, dust they save and put it in trolleys, and they'll run it through this outfit and that outfit. You'd be surprised at the sand that comes out that - that dust and tobacco when it goes through the Swaco. They've got a unit they call the Swaco down there.

Q. And I believe you testified on direct examination that all this stuff that you get, sweep up or suck out and send away---

A. Oh, they've got some now that they do throw away, dust and just pure trash on the floor.

Q. But the small tobacco dust is called fines, isn't it, f-i-n-e-s---

A. I don't know what they call it.

Q. ---isn't that correct, sir?

A. I don't know what they call it. That's - yeah, it's fine tobacco. They save it in trolleys and screen it back through.

Q. Yes, sir. But some of the dust that you've described of tobacco is actually finer than snuff, isn't it?

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A. Yeah, it's just as fine as snuff.

Q. Yes, sir. And it's sent up to Hopewell, Virginia, to the reconstituted tobacco - reconstitution tobacco plant, is that correct, sir? You-all shipped it out of here, right?

A. Way back yonder when they first started on that - what you call it? - synthetic tobacco, all that fine tobacco - anything that wasn't nothing but pure dust, they shipped that to Richmond and made synthetic tobacco out of it.

Q. That's what we call reconstituted tobacco, yes, sir. Do you know anything about the reconstituted tobacco process, how they do it?

A. No. They call it synthetic tobacco. I don't know.

Q. How do you know, sir, that the gas that we're talking about here today, the DDVP gas - how do you know that it penetrates the tobacco and not just the atmosphere in the factory, in the manufacturing plant?

A. You can stick - reach and get you a handful of it and smell of it.

Q. Well, how do you know you're smelling the gas as opposed to the inert agent?

A. I know - I know gas when I smell it, and I know tobacco, and you can still smell it. It's in there when

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the day shift comes in. You can walk in certain areas where that air-condition hasn't circulated it, and you can smell it just as good.

Q. We're talking about the tobacco, sir, in the bulks and not in the actual line - or production line into the manufacturing process, aren't you? Isn't that what you're talking about?

A. In the cut bulk. In your cut bulk factory, cut, got ready to go in the cigarette. You can reach down in there and pull out tobacco that deep (indicating) and smell that gas. Sometimes, say, a bulk broke down and it's shot for several days before it reaches manufacturing over there.

Q. All right, sir. And several days later you're saying you can reach down in there six or eight inches---?

A. Yes, sir, if that bulk's not run after that - after the two hours, I can smell it.

Q. Do you know anything about the dissipation or the evaporation rate of this particular chemical? Do you know anything about that?

A. No, sir. That was all left to engineering.

Q. Now to get back to where we were a moment ago, I believe you denied that the tobacco that's swept off the floor is thrown into the Dempster Dumpster and thrown away. You deny that, is that right?

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A. Yeah, the tobacco is saved.

Q. All right, sir. We'll get to that in a second. Now I want you to describe the odor of this gas. Give me a description of it.

A. The odor of this gas?

Q. The odor of it. You said you could smell it.

A. I can't describe it.

Q. Is it sour? sweet? Does it smell like a perfume or a fruit?

A. It smells kind of like old crude oil or something. That's the smell of it, to me.

Q. Yes, sir. All right, sir. Isn't it a fact, sir, that the fines or the dust-type tobacco that we're talking about - you were talking about a moment ago that is used for reconstituted tobacco comes from the manufacturing process, and a small amount of the fines near the makers and the bulks, but not from the floor? Isn't that - isn't that a fact, sir?

A. Well, your fines - your fines - you get dust from that tobacco traveling the conveyors. It piles up on the machines and conveyors overhead, and they've got side pans on each conveyor catching that tobacco.

Q. Yes, sir, I understand that.

A. All right. That might lay there for a week, shot over and over.

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Q. Yes, sir.

A. But that dust, they grade that stuff. They grade it in different styles. They grade it, and some of it they run it in this, that, and the other, and the other they send it off and have synthetic tobacco made out of it. Now---

Q. Yes, sir. And--- Go ahead, sir.

A. What kind they're sending off - I think it's a dust, and they told me the sweepings off the floor and the dust.

Q. Who told you that?

A. Well, I seen it, too, when I was there working.

Q. Saw it sent off?

A. Huh?

Q. Saw it sent off? You were involved in the shipping of it, also, is that right?

A. No, I wasn't involved in it. The clean-up crew shipped - put it in trolleys, and the supervisor shipped it out.

Q. All right, then. How do you know what he shipped up to Hopewell or Richmond---

A. I don't.

Q. ---other than the fines?

A. He - I had to go in his office every morning, and he told me and Bob, the boy that worked with me---

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Q. Yes, sir. That's Bob Smith?

A. Yeah.

Q. Yes, sir.

A. ---that - that they had sent some of it off, have it put into synthetic tobacco, and the other is fed in - fed into the other tobacco.

Q. That's when it came back?

A. Yeah.

Q. What you call synthetic, we call---

A. Well, they trade so much, they said, to Durham for so much of their blend, see.

Q. I understand that. We're getting kind of - what you're talking about is - when it was put back in is - when it came back as what you call synthetic or reconstituted tobacco, it was put back in the manufacturing process, is that right?

A. Yeah.

Q. Is that right?

A. That's true.

Q. That's what you're telling us?

A. You can't believe it to see it. It looks like oak leaves.

Q. I know exactly. I've seen it. All right, sir. Talking about the gassing system that we're talking about, you mentioned earlier that it had a gallon or it had five-

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quart jugs---

A. It's either a gallon - I don't make no specification on it, but it's a jug that will hold, looks like to me, at least a gallon.

Q. That's perfectly all right. Or you said five quarts. That's okay. Where were these jugs located, please, sir?

A. They was on the columns. You made a bracket and put it on that column and set that jug in it and run a copper tubing to it for the air to hit that jug, and it comes out that nozzle on the jug like a paint spray.

Q. Yes, sir. The copper tubing was the air hole---

A. Air, yeah.

Q. ---is that correct?

A. They turned the air on it, and it should come out.

Q. That was the supply to when it was turned on, was to put it through the nozzle out into the atmosphere?

A. Yeah, they sprayed it in a fog.

Q. As a fog?

A. It fogs up.

Q. And the fog turns into a smoke and the smoke turns into invisible gas, right?

A. Yeah, to me. That's they way it looked to me.

Q. Now you say they were located on columns?

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A. And walls. Walls. Walls too.

Q. That's what I wanted to ask you. Were they in the corners of the room, the middles of the room, or---?

A. Well, it was everywhere, corners, middle, column, and they just spaced them so many feet apart wherever they had to put them.

Q. So they could cover the whole area, right?

A. Yeah.

Q. Were they near the ceilings?

A. Well, no. They was down about halfway of the wall, most of them.

Q. How high are the ceilings in some of these rooms?

A. About twenty foot, I think.

Q. So, then, these jugs would be up ten, twelve feet?

A. Yeah, out of operation, for people would be---

Q. So you wouldn't bump your head on them or whatever?

A. Yeah, bump your head or pull for a skid of tobacco or something.

Q. Yes, sir. Well, in fact, sir, you needed a ladder to---

A. Oh, yeah.

Q. ---go up and get to them, is that correct?

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A. We had a ladder when we put it up there.

Q. Yes, sir. That's when you were working on the shift---

A. Yeah.

Q. ---that replaced the jugs?

A. Yeah.

Q. You mentioned that for some time you did that, is that correct?

A. Yeah.

Q. And what was the length of that particular ladder that you would have to use?

A. Let's see. Now I believe I was using an eight-foot ladder.

Q. Yes, sir. And you're - how tall are you, Mr. Dickerson?

A. Five foot five.

Q. And you'd get up on that ladder where you could reach eight, ten, twelve feet above the floor and put the jug on, is that right, and then move to the next one?

A. Well, I wouldn't - I'd say it was close to ten foot.

Q. Yes, sir, that's what I'm saying. You'd have to climb the ladder. You couldn't reach it standing on the floor, could you?

A. No, ain't no way.

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Q. All right. Now were you ever in one of the rooms when the chemical was released through the system?

A. Yeah.

Q. How many times?

A. Several times.

Q. I believe you said that in your affidavit, is that correct, several times?

A. Yeah. One time it really got me. I couldn't shave for four days.

Q. Yes, sir. Do you recall what we call in Mississippi a Workers' Compensation Commission? I think up here you call it an Industrial Commission or whatever, but---

A. Yeah, I've heared of it. I don't know exactly what it is.

Q. Well, you filed a claim, didn't you, sir, back in 1979 concerning your loss of sight before the North Carolina Industrial Commission? Is that correct, sir?

A. You're going to have to talk to my lawyer about that.

Q. Well, did you or didn't you?

A. He done all - I don't remember. I just remember I had signed papers and we had been to court at Wentworth and at Durham, and what all we went through with you'll have to talk to my lawyer.

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Q. I understand that, and we'll do that. I'm simply saying, though, that you offered yourself as a witness and your lawyer offered Bob Smith as a witness. You recall that, don't you, sir?

A. Yeah.

Q. And you and Mr. Smith both testified about two occasions in the seven years you-all worked on the third shift when the thing came on accidentally or caught you in there, is that correct, sir?

A. I thought it was more than that.

Q. Yes, sir. And as a matter of fact, this workers' compensation hearing was back in 1979 or 1980, wasn't it, sir, right after you retired or was on disability?

A. Yeah. '79 or '80, I think, yes, sir. I don't recollect.

Q. And I believe you testified, did you not, sir, that this occurrence when you got caught at least twice in it was about seven years before the hearing, which would have made it in about '72 or '73, isn't that right, sir?

A. Now I just remember that. I got caught - they shoot one department, and your conveyor is coming through the floor to the department you're working in, and you get it bad.

Q. I understand you. But at your workmen's

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compensation hearing do you deny that you testified that it had happened to you twice about seven years before your retirement?

A. I don't - don't recollect.

Q. And do you recall Mr. Smith, who was your witness, testifying that---

A. No, sir.

Q. ---that he was---?

A. No, he wasn't my witness. All the millwrights - about half - half of all the millwrights they called over there to testify, the company did. I didn't call Bob Smith.

Q. Well, then, do you recall that Bob Smith testified---

A. Yeah.

Q. ---and supported your position that it did happen twice but about ten years before your retirement rather than seven? Do you remember that?

A. No. It ought to be on paper somewhere.

Q. Yes, sir. Suffice it to say, though, you had some fine eye doctors, including doctors over at Duke University Medical Center, is that correct, sir?

A. Uh-huh.

Q. And that's recognized as one of the finest medical centers in the world, isn't it? You people in

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North Carolina are very proud of it, aren't you?

A. Well, I reckon the ones they helped are, but they couldn't help me, and this one over here in Greensboro couldn't help me.

Q. They couldn't return your vision, is that correct, sir?

A. No. They said it - the nerve in my eyes, it damaged it, and they couldn't give me an eye transplant.

Q. Yes, sir. All right, sir. But they also testified, did they not, sir, that the chemicals at American Tobacco Company had nothing to do---

A. No, sir.

Q. ---with your loss of sight?

A. They - the doctor read it right out of the book - read it right out of the book down there that it absolutely would damage your eyesight and give - give me a paper to take to the secretary up there when I paid the bill, and I was fool enough to let her have it, and she wouldn't give it back to me. I should have walked on by and went to one of them things and got a photostatic copy.

Q. Who was that? Dr. Chandler?

A. Dr. Chandler is right.

Q. So then he turned on you, is that correct?

A. Yeah, he turned on me. Wouldn't - wouldn't appear in court.

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Q. And as a matter of fact, you couldn't find any doctor, could you, sir, to testify---?

A. I didn't look for one.

Q. Well, did your lawyer look for any?

A. I don't know.

Q. It was important to you, wasn't it, sir, because you had lost your sight?

A. Right. I had been to Winston, Greensboro, down here at Duke. They ain't no place to go as I know of.

Q. And haven't all of those doctors advised you, sir, that they can't restore your sight but that the chemicals at American Tobacco Company had nothing to do with you losing your sight?

A. No, sir. Dr. Chandler read it right out of the doctor's book to me that it would.

Q. But then backed up on you, you say?

A. Huh?

Q. But then turned around and backed up on you?

A. Backed up. Wouldn't come to court.

Q. Yes, sir. What chemical did he read out of the book, sir?

A. DVP [sic].

Q. I believe you testified, didn't you, sir, that they put cyanide in your eyes?

A. Well, they called it cyanide gas.

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Q. All right, sir. Who called it that?

A. Well, a number of them.

Q. Is that what you called it?

A. I didn't know what it was, just - just what I read on the barrel.

Q. Did you have the same lawyer back then that you still have, Mr. Light?

A. I - I haven't seen him in years.

Q. Yes, sir. Well, anyway, to make a long story short about your workers' compensation loss of sight claim, it was dismissed with prejudice where it can't be brought back, wasn't it, sir?

A. No, sir. We left the case open in Durham.

Q. All right, sir.

MR. UPSHAW: Well, I want to introduce into the record a order---

A. I had him to tell the judge, so said we'll just leave it pending.

Q. Let me just, if you will, sir - and I'll be right back with you.

MR. UPSHAW: I want to introduce a photocopy of a record - of an order of the North Carolina Industrial Commission, docket number H-3955, involving Walter Dickerson versus The American Tobacco Company. The date of the hearing was October the 16th, 1980, in

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Durham. The hearing officer was Angela R. Bryant. It was filed, this order was, October the 29th, 1980, and it states---

MR. BARRETT: Wait a minute. Wait a minute. The document speaks for itself, Jim.

MR. UPSHAW: I will read it if I want to, Don, and it will also speak for itself. And it reads, quote---

MR. BARRETT: Which we object to.

MR. UPSHAW: ---"After conference with the doctor, plaintiff's counsel moves for a voluntary dismissal.

"It is THEREUPON ORDERED that this matter is DISMISSED with prejudice and REMOVED from the docket in all counties.

"No costs are assessed," end quote, signed by Angela R. Bryant, Deputy Commissioner. And I want to introduce that as an exhibit.

MR. BARRETT: Is that a certified copy?

MR. UPSHAW: No, it's not, but we can get you one if you want it. Do you deny that that's an accurate copy?

MR. BARRETT: I've never seen it. I deny that it has any relevance whatsoever.

THE WITNESS: I didn't hear - I never heared my

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lawyer say nothing about that.

(The above-referred-to
(document was marked
(for identification as:

(DEFENDANTS' DEPOSITION
(EXHIBIT NO. 2

Q. Okay. That's been eight - seven years ago. You-all haven't been back to court on it, have you, sir, since then?

A. No.

Q. Yes, sir. And you haven't talked to Attorney Light about "When are you going to go on and get my case handled"?

A. He wrote me a letter here - it's been about two years ago, wanted to know how I was doing and everything, and he - he didn't state we was going on with it, but he said, "I've still got hopes."

Q. On your workers' compensation claim?

A. He didn't say workers' compensation or whatever.

Q. You mentioned a couple of times that you and Mr. Smith, or whoever, was caught in the room when the chemical was sprayed?

A. Yeah.

Q. Why were you in the room?

A. We - we was millwrights. We had to go around and overhaul and repair machinery while the plant was down.

Q. All right, sir. But you had been told that you

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were to be out of the rooms when they were scheduled to be gassed, hadn't you, sir, if you knew it was going to come on?

A. If we knew it was coming on, but we didn't know it was coming on.

Q. I understand that. You were surprised a couple of times? You were caught in the room unexpectedly a couple of times?

A. Unexpectedly.

Q. But if you knew it was coming on---

A. We would have stayed out of there.

Q. ---you got out of there because---?

A. It takes my breath.

Q. And that was your instructions, though, from your superiors, was to be out of there if you knew it was coming on, right?

A. Yes, but the man's supposed to call it out. He didn't call it out when they was supposed to shoot, see. He didn't call it out on the intercom. They used to go around and hang signs up on the fire doors, and then they got the intercom system, see, and he'd call out which department they was going to shoot, but he didn't call out nothing. He just hauled off and shot it---

Q. But it was given on a regular schedule.

A. ---Dick Apple.

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No, not exactly. Now the clean-up crew - it was according to whether we had - had work to do in that department that was so important that he couldn't shoot that department, and we'd have to do work - important work in all the departments, and he'd fail to shoot.

Q. I understand. Yes, sir. Are you still - Mr. Dickerson, are you still seeking to recover any damages, either by workmen's compensation or otherwise, from American Tobacco Company for the injuries that you received to your eyes?

A. Well, I'm not - I thought the case was over.

Q. I thought you just told us you didn't think it was over.

A. And - well, he give me some hope, but I think they ought to pay - pay me for my loss of work as a millwright from the time this thing happened. I could be on the job if it hadn't happened, see.

Q. So you still believe, regardless of what the doctors say, that your loss of eyesight was a result of your employment---

A. Right.

MR. BARRETT: Object to the form of that question.

Q. ---is that correct, sir.

A. Well, the eye doctor said so.

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Q. But then you say he turned around and changed his mind?

A. Right, the eye doctor. But these regular doctors ain't said nothing about it.

Q. Well, is your motive in testifying on behalf of the Horton family in this lawsuit - is it to get the message across that you feel you are entitled to recover?

A. Yes, sir.

Q. I take it, sir, that since you knew that the DDVP, as it was gassed into a space, was bad for you. Once it was gassed into that space, you knew to get out of the room as fast as you could, didn't you?

A. Yeah.

Q. In other words, once the gas started you didn't stand around and watch what happened?

A. You didn't fool around; you got out of there.

Q. That's right. When the - when the gas started, you got out of there?

A. Dr. Payne, the head doctor at American Tobacco Company, wrote me a paper up there - I gave it to my lawyer - what he thought about the gas in my situation, and he said I was one amongst many that the gas would hurt, so I took it and gave it to my lawyer.

Q. Well, the gas would hurt anybody if they stayed in the room, wouldn't it, sir?

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A. Oh, my God, it would get them.

Q. You couldn't stay in that room with that gas, could you? It would make you vomit.

A. Well, I don't know. Now they caught a nigger sleeping in a barrel, pops his head out there - pops it, and he slept right on through it in one of them big barrels.

Q. And it didn't hurt him?

A. I don't know what it done to him, but he just - he come crawling out the next morning at seven o'clock.

Q. And who was that?

A. I don't know his name.

Q. All right, sir. But you didn't stay in the room? It would make you---

A. No, I just - I was just going through a department and seen him getting out in the sliver room.

Q. Well, isn't the only way you know what happened to the gas after it was shot out into the atmosphere in the room was the fact that you looked through some glass windows at times and observed it?

A. Oh, yeah. I wasn't sticking my head in it.

Q. And that's when you described this morning again during my questioning the fact that it was a fog and it quickly broke down into a smoke and quickly broke down into an invisible gas, right?

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A. Yeah. I watched it several times through glass doors where they have these swinging doors, rubber doors that come together.

Q. I understand that, sir. Now isn't it a fact that the gas as you've described it - or the dispensers as you've described them, up on the columns and up on the walls, eight, ten - eight, nine, ten feet above the floor---

A. Yeah.

Q. Isn't it a fact that that gas was emitted out into the atmosphere---

A. Yeah.

Q. ---and not sprayed directly on the tobacco?

A. Directly on the tobacco. You take your cut storage bulk. You've got twelve of them twelve feet wide and I'd say seventy-five feet long. In between every so many bulks they've got them things on the columns up there spraying directly on the tobacco.

Q. In other words, it wasn't emitted into the air in the space above---?

A. Directly over in the air, I'd say five feet above a bulk.

Q. Which means, then, not directly on it, but if it got on it, it had to settle on it?

A. Yeah, it settled on it.

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Q. All right. Do you know - I believe you said somewhere that the release of the gas lasted approximately fifty-five seconds, is that correct, sir?

A. Well, it was - there was - now I did know the figure, but I've forgotten, it's been so long. It was - the first time, when I went on third shift, they was spraying it about two minutes, I think, and so many seconds on that timer. I seen - stand and watch them shut it off, you know.

Q. Yes, sir. Well, you can't tell me, can you, Mr. Dickerson, how much of the actual gas was actually released in that fifty-five-second period, or whatever, can you? You don't know how much was actually released?

A. Well, the engineering can, because we had to go measure the jugs, measure the jugs ever so often and see how much gas was gone, see.

Q. I've got you.

A. Some of them would be leaking.

Q. I've got you. What I'm saying - that gets to one of my questions that I intended to ask you later. You didn't have to change that five-quart jug every day?

A. Oh, lord, no.

Q. That would last a month or so, wouldn't it, or longer?

A. I'd say it would last, anyhow, at least twenty

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days.

Q. Yes, sir. So---

A. I really don't know.

Q. Mr. Dickerson, if I represent to you that the amount of gas - or the amount of chemical that was emitted from one of these dispensers that we're talking about into the atmosphere in that fifty-five-second period was no more than one gram of chemical per thousand cubic meters of air in the room, you have no basis to disagree with me on that, do you, sir?

A. Well, no, but they've got several jugs.

Q. I understand that. I'm talking about, though, one gram per thousand---

A. I don't know. I just don't know.

Q. All right. So if I represent to you, sir, that that is less than a fourth of a teaspoon of pesticide, that is, the chemical---

A. I'm not that smart.

Q. I'm going to ask you this, though. Now you just listen, and if you can agree with it, do; and if you don't - can't, don't. If I represent to you that what I just said is less than a quarter of a teaspoon of the actual chemical in a room thirty-three feet wide, thirty-three feet deep, and thirty-three-foot ceilings, you don't have any basis to disagree with me on that, do you, sir?

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A. I don't know a thing about what you're talking about.

Q. All right. Now when you reentered the room after it was aired out, could you still smell the pesticide?

A. Yeah, and especially in corners where there's dead air, you know.

Q. Well, the room was ventilated for two hours before they allowed you to reenter it, is that correct, sir?

A. I think they cut that back to an hour on the last; but, anyway, they changed it from eighty percent back to about thirty or forty percent stuff. Now I got it back on that eighty percent. It'd take the hide off of you.

Q. But what I'm saying is you didn't do that; the air-conditioning personnel ventilated the room, didn't they?

A. Yeah, from another department. They had a switch where they turned it on.

Q. That was not your job; you were a millwright?

A. No, that's right. My job was machinery.

Q. Yes, sir. You weren't in the clean-up crew; you were a millwright?

A. That's right.

Q. You were not in the air-conditioning crew, so it

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was not your function or duty to ventilate the room?

A. No, sir.

Q. It was done by other American personnel, is that right?

A. That's right.

Q. Are you familiar - or you are, I assume, familiar with the concept or the fact - the fact, Mr. Dickerson, that a large, concentrated amount of anything - a chemical - will have a greater effect than a small, diluted amount of the same chemical? You agree with that, don't you?

A. Yeah.

Q. In other words, if you were going to put a poison, like when you used to do the chickens, a large, concentrated amount of it probably would kill the chickens?

A. Yeah.

Q. But a small, diluted amount of it wouldn't hurt it?

A. That's right.

Q. Example - for example, if you take aspirin as directed, say, one or two every so many hours, it won't hurt you, will it?

A. No, don't bother me.

Q. But if you took the whole - but if you took the whole bottle, it might kill you, is that correct, sir?

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A. I wouldn't try it.

Q. So you do believe in using chemicals, if they have to be used, as you are directed to use them, is that correct, sir?

A. No. I believe that you should use chemicals that will not harm the body.

Q. I understand that, but you use chemicals for the particular purpose they're to be used for, as they're directed to be used; you don't just go in there and use the concentrated portion and pour it on somebody, do you, or on some product?

A. Well, you don't - you can't use chickens as an example for no human being.

Q. I understand that, sir. I'm just asking you, then, do you agree that if an aspirin bottle with a hundred aspirin in it---

A. Yeah, it'd kill you.

Q. If it says take two aspirin, you don't take a hundred, is that right?

A. That's right.

Q. And if you have instructions and directions on how to use, say, Roundup or any chemical to kill grass or whatever, you use it per the instructions and directions---

A. That's right.

Q. ---of the manufacturer, don't you, sir?

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A. Yeah. If you've got to use it or are going to use it, you use it according to directions.

Q. When did you first talk to Mr. Don Davis over here or Mr. Don Barrett or anyone from their firms about this affidavit that you've given and about this testimony you're giving today?

A. I don't know. One day---

MR. BARRETT: Yesterday afternoon.

THE WITNESS: Huh?

MR. BARRETT: Yesterday afternoon.

A. Yesterday afternoon.

Q. Never had even talked to them by phone or whatever?

A. No. I didn't even know them.

Q. All right, sir. How did they get that affidavit, then, do you know?

A. I just don't know.

Q. Did you know when you gave that affidavit that it was going to be sent to Mississippi to be used in a lawsuit?

A. No, sir, had no idea.

Q. Well, did whoever you gave it to have permission to send it to Mississippi to use it in a lawsuit in Mississippi?

A. Well, I reckon my lawyer done it. I don't know.

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Just I reckon.

Q. You didn't give him permission tc do that?

A. Didn't give nobody permission to do nothing. He handled it just like he seen fit.

Q. I'm not talking about your case; I'm talking about our case.

A. I don't know a thing in the world - I don't even know nobody in Mississippi.

Q. Yes, sir. You're not involved in our lawsuit?

A. No.

Q. When he read this affidavit back to you, did he read Ella Horton, et al., Plaintiffs, versus The American Tobacco Company, Defendants, that it was being used in a lawsuit in the state of Mississippi?

A. Yeah. I believe I'm right.

Q. Did you give him permission to do that, sir?

A. Yeah, I gave him permission to do that. What, this lawyer here?

Q. You didn't even know this lawyer here until yesterday. This affidavit came to Mississippi before yesterday. I saw this affidavit a week or so ago.

A. That's a fast plane, wasn't it?

Q. Sure did beat him. It got there before you ever saw him.

What was the substance of the - what was the content

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the conversations that you had with Mr. Barrett and Mr. David yesterday - Mr. Davis?

A. Well, they've got it on paper. You ask them.

Q. I've got to ask you. They won't tell me anything.

A. I can't - if you ask me - ask me a question about any one specific thing, I'll tell you.

Q. All right, sir. What I want to know is - I've already asked you a lot of those questions, Mr. Dickerson. But did they come up here last night or late yesterday afternoon?

A. Let's see.

MR. UPSHAW: Don, when did you-all come up here?

MR. BARRETT: Late yesterday afternoon.

Q. Late yesterday afternoon?

A. I was down in - down in the doctor's office downstairs when they got here - when he got here.

Q. Yes, sir. How much time did they spend with you yesterday afternoon discussing it?

A. It wasn't long, because I had to eat supper.

Q. Did they tell you about what they were going to ask you today?

A. No.

Q. What did you-all talk about?

A. Asked me more questions about the plant down

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there, just a few more questions I've got to ask you about the job down there, so I said all right. I'd just come in from down there having that light run up me, and I didn't like it, but I told him what I know.

Q. Yes, sir. That's no fun, is it?

A. No, sir. I was suffering.

Q. Yes, sir. I understand. Now let me ask you this: How did Mr. Davis and Mr. Barrett get in touch with you, or how did they get in touch - how did you get in touch with them?

A. I didn't get in touch with them. I just - now I don't know.

Q. All right, sir.

A. Just come in here and wanted to ask me some questions about it.

Q. I've got you. I've already asked you about who drafted or who actually wrote this deposition [sic], and it was the attorney who's standing over there.

MR. UPSHAW: I believe you're from Wake Forest, aren't you, sir?

MR. KERNODLE: I think you're referring to the affidavit again.

MR. UPSHAW: The affidavit again. I'm sorry.

MR. KERNODLE: I reside in [DELETED]

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Q. All right. The attorney, Mr. Kernodle or---

MR. KERNODLE: Kernodle. John R. Kernodle, Jr.

MR. UPSHAW: Kernodle, yes, sir.

Q. ---he drafted and wrote this, you've already told us that, is that correct?

A. Uh-huh.

Q. So are the words in this affidavit his words as he interpreted what you told him or are they your words?

A. They're my words.

Q. You actually used all these words?

A. Yes, sir.

Q. All right, sir. What did you mean - and I'm now referring to the last paragraph on the third page - "The tobacco with the residue from the spray"? Whose word is "residue"?

A. He must have put that "residue" down.

Q. Yes, sir. What do you mean by "residue"?

A. Coming - the contents coming from the spray.

Q. Yes, sir. But what - in other words, you're talking about the gas as it comes from the spray is the residue, is that correct, sir?

A. That's the way he referred to it, residue.

Q. Yes, sir. That's what I'm talking about. That's the reason I was asking you was "residue" your word or was that his word?

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A. That's his word.

Q. Yes, sir. And I notice in that last paragraph that several of the things that apparently you told him and he wrote down are underscored, marked with a pen, underscored. Did you tell him to do that to give a special emphasis to it?

MR. KERNODLE: Object to the form. It was done on line paper, but there's not a single underline in it except for the signature line.

MR. UPSHAW: In the first place, unless you make an enter - entry of an appearance in this lawsuit, you don't have any standing to object to anything.

MR. BARRETT: All right. I'll make the objection.

MR. UPSHAW: Well, make it.

MR. BARRETT: I just did.

MR. UPSHAW: What's your objection?

MR. DAVIS: I'm going to object to misleading the witness. There's nothing underlined in the affidavit that I have. Now maybe you've underlined your copy. Ours doesn't have any words underlined.

MR. UPSHAW: Well, if that's true, I apologize for it, because I thought it was.

MR. DAVIS: Here's my clean copy, and I'll be happy to compare it with yours.

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MR. UPSHAW: I have one that is underscored, and maybe it was done in my office. I don't know.

MR. BARRETT: It was done in your office. It was not done by us.

MR. UPSHAW: I'll withdraw that. I'm mistaken. I thought that special emphasis had been given by underscoring some of it. Apparently someone in my office had given it the special emphasis.

THE WITNESS: Is it getting about dinner time?

MR. UPSHAW: Yes, sir, it is for me. I'm sure---

THE WITNESS: I ain't ate since yesterday.

MR. UPSHAW: We're going to be through in just a few minutes, sir.

Q. For the last seven years of your employment you worked on the third shift down there, didn't you, sir?

A. No, I worked on second. The last years I worked down there was on second.

Q. All right. Then that was the shift when the spraying was not done, is that correct?

A. Was not done. We - I put out---

Q. The jugs?

A. ---the jugs. Yeah, I put out the jugs at times, not every night, just at special times when the day shift couldn't get them all.

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Q. I understand that. What I'm saying is, then, so - you retired in '79, so from 1972 till 1979 you were on the second shift and not the third shift?

A. That's correct.

Q. Yes, sir. And so, then, the times that you were on the third shift would be the eight years prior to 1972? That would be from - you said for about fifteen years you were a millwright?

A. No, about seventeen years I was a millwright, seven years on third shift and eight years on - let's see - eight years - eight years on second. I believe it was eight years on second shift, but I do know I worked seven on third, and I worked by myself on second shift. And I had to pour that gas in chimneys. All them chimneys and things around there, I had to take it and pour it in there to keep the bugs down.

Q. Well, if you worked the second shift your last seven or eight years there---

A. Yeah.

Q. ---then you worked the third shift the eight or ten years before that, is that right?

A. Well, I come right off second on - right off third on to second.

Q. That's what I'm talking about.

A. And I just - just remember what date I come off

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of third.

Q. I'm not trying to tie you down on dates. You said seven or eight years - your last seven or eight years you were on the second shift, and you retired---

A. That's right. That's true.

Q. And you retired in '79?

A. Sure did.

Q. So, then, from around '71 or '72 was your last seven or eight years and you were on the second shift?

A. Well, I retired in '79, so you can count back.

Q. To '71 or '72?

A. Yeah.

Q. That's seven or eight years, right?

A. Yeah.

Q. And then the eight or ten years before that was when you were on the third shift?

A. Eight or ten years before that?

Q. That's right, before you went on the second shift.

A. Yeah, I was on third.

Q. All right, sir. So during the time that you were on the third shift, I believe you've described the only people on that shift was maintenance people, clean-up people, watchmen, and air-conditioning people, is that right?

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A. And - well, you had one fellow - I forgot that. You had a foreman over the - over the clean-up crew.

Q. Okay. All right, sir. But he was with the clean-up crew, then, right?

A. Oh, yeah.

Q. So during that time, that is, while you were on third shift, it was not a production shift, was it, sir?

A. No, it sure wasn't a production shift. It was the clean-up crew and maintenance and air-conditioning and watchmen.

Q. In other words, they were not making and packaging cigarettes---

A. No, sir.

Q. ---during that shift?

A. No machinery running.

Q. Yes, sir.

A. Just once in a while they'd run that old thing that bustes [sic] them packs down there to get - get some trolleys.

Q. Indulge us just a moment. We'll go - we'll be through in just a second, Mr. Dickerson. In your affidavit, sir, you mention that you were told by some supervisory person that you were spraying to get rid of the bugs in the area, is that right, in the plant?

A. That's true.

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Q. All right. Who told you that?

A. Charles - let's see - Bill Springs was the engineer then. I worked under the engineering department. And later on Charles Bendol - he's retired now - Charles Bendol was the engineer, and now McCollum is the engineer.

Q. Now isn't it a fact, sir, that - and this is getting a little of repetitious, but to get back to this, that the chemical that was released as a gas was to get rid of the bugs in the air in those rooms - the flying bugs and these beetles that you're talking about?

A. They crawl in the back and lay eggs, see.

Q. That's what I'm talking about, these eggs or these little worms, larvae.

A. Yeah. They sprayed - sprayed to do that.

Q. And that was what that gas was gassed out there---

A. That's right.

Q. ---to control---

A. That's right.

Q. ---isn't that right?

Isn't that why the chemical was used on the third shift, at night?

A. Right.

Q. Because that's when the bugs would be out flying around in the air, wasn't it, sir?

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A. Well, your machinery is not running, see, and they can go as they please.

Q. Well, it's darker in there late at night, isn't it?

A. Yeah, they cut the lights off in that department.

Q. Don't keep them all on, and these bugs, when you cut all these lights off between eleven p.m. and seven a.m., a lot of them come out like night bugs and fly around up in the factory, don't they, sir?

A. Well, I don't know. You can see most - several different kinds of bugs in there.

Q. I understand that. I'm talking about - there was a bug that came out and flew around at night?

A. I don't know whether it flew or whether it just laid eggs or whatever.

Q. But spraying was only done on the third shift?

A. That's right.

Q. It was not done on the first shift, not done on the second shift?

A. No.

Q. And it was not done while the plant was in production, producing tobacco, was it---

A. Right.

Q. ---I mean producing cigarettes?

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A. That's right.

Q. All right. You mentioned in your affidavit, sir, that the chemical caused damage to or ate up metal railings and concrete floors.

A. Yeah, where it was running out of the jugs.

Q. Yes, sir. Where it dripped on it?

A. Yeah, where it dripped out of the jug down on - there's a air-condition up on second floor where I noticed it at. I had to go behind it to get through, and that jug sprayed - or it got to leaking, and it leaked down on that steel rail and done eat all the paint off of it and started eating on the metal.

Q. I understand.

A. And then down on the concrete floor you could tell where it - where it dripped on that and had damaged the floor.

Q. That's what you were talking about that if they found it, that they'd wash up with alcohol?

A. Yes, sir.

Q. And that was the concentrated---

A. Not that. Down there where they - in the welding shop they put that stuff in them jugs on that concrete floor---

Q. I understand.

A. ---and they used alcohol to kill the contents of

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that stuff.

Q. If they spilled some of it---

A. Yeah.

Q. ---on the floor, right?

A. And you're going to spill it if you fill up twenty-five, thirty, fifty jugs.

Q. But you are talking about now the actual liquid and not a gas; you're talking about what came out of the jug as a liquid and---?

A. Yeah. The nozzle on it would mess up, and it would start leaking, dropping - dropping down. Plus it would spray, but it still leaked all the time, day and night.

Q. You mentioned one place in your affidavit about pouring a chemical and it blowing back in your face.

A. Yeah. That was in a chimney over there, and I believe that's building eight or nine. The bugs got in them big chimneys where they run dust in and stuff like that. The air - so many air things run into that chimney. And I opened the door on that thing, and I didn't pay no attention, I just dumped it like that right there (indicating), and that stuff blowed back in my face, got in my eyes, and I had to run over there at that water fountain where it sprays two streams of water---

Q. Yes, sir.

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A. ---and wash my eyes out, and---

Q. That was what that was for, wasn't it?

MR. BARRETT: Wait and let him finish his answer.

A. (continuing) And they burnt. Lord God, for weeks my eyes burnt. It wasn't long after that till they was gone.

Q. Yes, sir. You're talking about now the actual liquid blowing back in your---?

A. The actual liquid.

Q. You're not talking about a gas?

A. Drops of - drops of it. And that fan blowing up that chimney, see - when I opened that door on the chimney and turned that jug up like that, it blowed it back into my face.

Q. It felt wet when it hit you?

A. Oh, yeah.

Q. Like water?

A. I just dropped the jug and run---

Q. Did you make---

A. ---dropped it down the chimney and run.

Q. Did you make an incident report of that?

A. You know, I should have.

Q. You didn't even do it?

A. No, I didn't make no report.

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Q. Did you go to a doctor?

A. Well, I went to Dr. - Dr. Crosby. My lips swelled up on me, rolled up to my nose, and all that. I was in bad shape.

Q. Was that that day or the next day?

A. The next day.

Q. Did you miss work?

A. No - yeah, I did lay out of work. I swelled so bad I was ashamed to go in.

Q. Why didn't you report it to anyone?

A. I should have just---

Q. Did anyone else see it happen, or you was up there by yourself?

A. No, I was by myself. See, they had me working by myself.

Q. As a matter of fact, you've never reported that or told anyone about it until now, have you, sir?

A. Well, I told them about it up there at the plant when they let me go, and my lawyer and their lawyer.

Q. Was that several months or several years after it happened?

A. No. I went to the doctor the next day.

Q. I mean when you told the people at American Tobacco about the incident, was that months later or years later or when?

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A. It was a few months later when I contacted my lawyer. The union sent me to that lawyer to defend me, see.

Q. Yes, sir. What was he defending you for?

A. On that gas - gas suit.

Q. Yes, sir. You mean your workers' compensation suit?

A. I don't know what you're talking about, workers' compensation, but he---

Q. What gas suit are you talking about?

A. Huh?

Q. What gas suit are you talking about?

A. That stuff they spray in them bottles.

Q. Well, did you win or lose that suit?

A. I don't know. The case is still pending.

Q. Have you ever recovered any money out of it?

A. No.

Q. So it's been pending now about eight years, then, hasn't it?

A. I'd say so, eight or nine years - nine years.

Q. You're also - or you used to be a welder, didn't you, sir?

A. Oh, yeah.

Q. Yes, sir. Did you do much welding?

A. I had to at night at times at the plant, but I

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run a welding shop of my own.

Q. Yes, sir. At home?

A. At home.

Q. Yes, sir. Were you told why - you mentioned you were having some blood tests when you were working on the third shift. Were you told why you were having those blood tests?

A. No. They said everybody exposed with gas, that stuff they shoot, said, has to go have a blood test, everybody.

Q. Wasn't it explained to you, Mr. Dickerson, that that was to protect you so that you would have---

A. Yeah. If I - they'd know it if I got it in my blood, see.

Q. That's right, to give you an early warning before too much of it got into your bloodstream if you were exposed, isn't that what they were doing that for?

A. Yeah.

Q. And weren't you told that it would show up in your blood test---

A. Yeah.

Q. ---before you'd been exposed enough to do you any harm?

A. Well, that's - I assume that.

Q. Yes, sir. When you were talking about it blew

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back in your face, is that the occasion that you were talking about on direct examination when you said you'd been sprayed in the face?

A. No, sir, that wasn't the occasion. I was - I was---

Q. Is that two separate occasions?

A. Two separate occasions.

Q. How far apart were they?

A. I don't know.

Q. Years?

A. Three or four years.

Q. Yes, sir.

A. And I had to go have my glasses changed after that, that first time it got me. Well, the last time, bless God, they couldn't fit me with glasses.

Q. Yes, sir, I understand. Now let me ask you this, sir, getting back to the blood tests: All of your blood tests over the years that you were working on the third shift were negative, weren't they, sir?

A. I don't know. They never told me nothing. They don't never tell you nothing, just go ahead and get your blood test. You don't know whether there is or ain't.

Q. Well, were you ever told that you had been exposed enough to it to do you any harm in your bloodstream?

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A. No, they never told me.

Q. And you never got the results - good results or bad results from the tests, right?

A. Neither one.

Q. All right. Isn't it a fact, sir - and we've already talked about this a little bit, but the chemical gas during the two-hour period was, as well as could be, sucked out of the room that had been gassed by the ventilating---?

A. Well, under the conditions that they had in different places, but there were some places they didn't have no fans, no nothing. It was just - you'd go back in two hours, it's in there. If you don't like it, it's still in there. You've got your work to do. The engineering department is going to ask you why didn't you do so and so.

Q. Well, how could you go back in there if it was still in there in a sufficient amount that it would hurt you?

A. Well, it had dropped down to where it would bother you - you could feel it burning your lungs, but it wouldn't bother you enough till you would have to go outside.

Q. Isn't it a fact, sir - or do you know - just isn't it a fact that this gas evaporated immediately so that there actually was no residue of the chemical, maybe

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the inert agent that carried it, but no residue of the chemical itself?

A. Well, why - why could you smell it two hours later?

Q. I don't know. I don't know whether you could.

A. I don't know how to answer your question.

Q. As a matter of fact, you said a lot of people couldn't smell it, is that correct, sir?

A. That boy that worked with me said, "I can't smell it," but now when he got a good dose of it that time over there at that spreader, he smelled it then. It choked him up. He had to run and get - stick his head out the window to get his breath. You get a good dose of it, you'll know.

Q. Well, in your affidavit the word "residue" that is used in there has to do with what you say you could smell, is that right, two hours after the ventilation process?

A. Well, yeah, two hours later you could smell it.

Q. Would it surprise you to know, Mr. Dickerson, that the manufacturer of DDVP says it, quote, "leaves no residue," end quote? Would that surprise you?

A. Well, after so many hours I don't reckon it will, but you take dust laying up on them conveyors and stuff up there that's been laying there sometime for weeks

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without being cleaned and, like, platforms and stuff. You reach down and pull that dust off down into a trolley, and that stuff is settled in there till you can actually smell it. I got sick and had to get out.

Q. Did you ever report that to anyone?

A. I told - I told my foreman over millwrights about it. I told him - I said, "I just can't stand it."

Q. Did you make out incident reports on that and---?

A. Not a report. I don't know what he done about it. I just turned it into my foreman.

Q. Did you report the spraying incident that we were talking about a moment ago, not the gas blowing back in your face, but the sprayed incident?

A. Yeah, I reported it to him.

Q. Did you make an incident report out on it?

A. No. I reported it to my boss.

Q. Did you go to the doctor?

A. On one occasion I went to the doctor. That was that time I was telling you my lips swelled up and rolled up.

Q. Well, then, on the spraying incident you didn't go to the doctor?

A. No, I didn't.

Q. I asked you this. Let me rephrase it. Are you

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aware that DDVP is approved by the Environmental Protection Agency?

MR. BARRETT: Jim---

MR. UPSHAW: Go ahead and make your objection, get it over with, and we'll move on.

A. You've done asked me that one time.

Q. I want to ask you again right quick.

MR. BARRETT: Obviously---

A. I don't know what they approve in Raleigh.

Q. So, then, you can't deny that it's approved, can you?

A. Well, I ain't got - I ain't got no comment.

Q. And incidentally, the problem that you have as you are here today, sir, is a colon cancer and a liver problem, is that correct?

A. That's correct.

Q. And the polyps that you were telling us about a moment ago?

A. Yeah.

Q. Incidentally, Mr. Dickerson, are you or were you a smoker?

A. About thirty-eight years ago.

Q. You haven't smoked in thirty-eight years?

A. No, sir.

Q. You quit when you were about, what, a teenager?

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A. Yeah.

(Discussion off the record.)

Q. Mr. Dickerson, just a few more minutes, and I apologize for the length of this already. You said you smoked as a teenager, I guess, and quit smoking sometime?

A. Yeah, I quit that. Them things was making me sick.

Q. I noticed as we've been here today your daughter has been in here with us, and she smokes. You're aware of that, aren't you, sir?

A. Oh, yes.

Q. Do you know whether or not she smokes an American cigarette?

A. I don't know what - I'm half blind. I can't tell what she smokes.

Q. You don't know whether she smokes cigarettes that are made here in Reidsville or not, is that correct?

A. I don't know.

Q. Have you ever warned her against smoking?

A. No. The pack is supposed to do that.

Q. Yes, sir. They have these warnings right on the packs, don't they, sir?

A. Yeah.

Q. Have you told your daughter about all these chemicals and everything that you-all were using in the

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Walter Willie Dickerson, Sr.	4	35		

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E X H I B I T S

DEFENDANTS'	MARKED FOR IDENTIFICATION
No. 1 - Handwritten affidavit of Walter W. Dickerson, dated 9/8/87	44
No. 2 - Industrial Commission order in docket number H-3955, dated 9/29/80	76

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CERTIFICATE

STATE OF NORTH CAROLINA)
)
COUNTY OF GUILFORD)

I, GLORIA D. WRIGHT-ELLISON, Court Reporter and a Notary Public, duly appointed and qualified in and for the County of Guilford and State of North Carolina, do hereby certify that, pursuant to notice, there came before me on the 29th day of September 1987, in Room B286, Annie Penn Memorial Hospital, Reidsville, North Carolina, the following-named person, to wit: WALTER WILLIE DICKERSON, SR., who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this case; that he was thereupon examined upon his oath and his examination reported by me and carefully reduced to writing under my supervision; and that the deposition is a true record of the testimony given by the witness to the best of my knowledge and belief.

I further certify that on the 12th day of October 1987, I placed in the United States mail at Greensboro, North Carolina, the ribbon copy of this deposition, addressed to John W. Barrett, Esq., Barrett, Barrett & Barrett, 404 Court Square No., Lexington, Mississippi 39095

I further certify that I am neither attorney or

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counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor interested directly or indirectly in the matter in controversy, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Notary Public,
County of Guilford
State of North Carolina

My Commission expires: 06/01/88

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